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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

SPENCER NEAL,

Plaintiff,

vs.

1490 ARLINGTON, LTD,

&

AARON'S,

Defendants.

Case No.:
Civil Rights

**COMPLAINT FOR INJUNCTIVE RELIEF
AND DAMAGES:**

1ST CAUSE OF ACTION: For Denial of
Access by a Public Accommodation in
Violation of the Americans with Disability Act
of 1990 ("title III" and "ADA"), 42. U.S.C. §§
12181 *et seq.*

2ND CAUSE OF ACTION: For Denial of
Access by a Public Accommodation in
Violation of Ohio Revised Code § 4112.02, *et*
seq.

3RD CAUSE OF ACTION: For Denial of
Access by a Public Accommodation in
Violation of Ohio Administrative Code §
4101:1-11, *et sec.*

DEMAND FOR JURY

Plaintiff SPENCER NEAL Complains of Defendants 1490 ARLINGTON, LTD and
AARON'S, and alleges as follows:

INTRODUCTION:

1. This is a civil rights action for discrimination against persons with physical

1 disabilities, of which plaintiff SPENCER NEAL is a member of, for failure to remove
 2 architectural barriers structural in nature at Defendants' SHOPS OF ARLINGTON, a place of
 3 public accommodation, thereby discriminatorily denying plaintiff access to, the full and equal
 4 enjoyment of, opportunity to participate in, and benefit from, the goods, facilities, services, and
 5 accommodations thereof. Plaintiff seeks injunctive relief and damages pursuant to the Americans
 6 with Disability Act of 1990 ("title III" AND "ADA"), 42. U.S.C. §§ 12181 *et seq.*; Ohio Revised
 7 Code § 4112.02, *et seq.*; and Ohio Administrative Code § 4101:1-11, *et sec.*

9 2. Plaintiff SPENCER NEAL is a person with physical disabilities who, on or
 10 about September 13, 2017, was an invitee, guest, patron, or customer at Defendants' SHOPS OF
 11 ARLINGTON, in the City of Akron, Ohio. At said time and place, defendant failed to provide
 12 proper legal access to the SHOPS OF ARLINGTON, "which is a public accommodation" and/or
 13 a "public facility". The denial of access was in violation of both federal and Ohio legal
 14 requirements, and plaintiff SPENCER NEAL suffered violation of his civil rights to full and
 15 equal access, and was embarrassed and humiliated.

18 **JURISDICTION AND VENUE:**

19 3. **Jurisdiction:** This Court has jurisdiction of this action pursuant to 28 U.S.C.
 20 §1331 for violations of the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.*
 21 Pursuant to pendant jurisdiction, attendant and related causes of action, arising from the same
 22 nucleus of operative facts and arising out of the same transactions, are also brought under
 23 parallel Ohio law, whose goals are closely tied with the ADA, including but not limited to
 24 violations of Ohio Revised Code § 4112.02, *et seq.*; and Ohio Administrative Code § 4101:1-11,
 25 *et sec.*

27 4. **Venue:** Venue is proper in this court pursuant to 28 U.S.C. §1391(b) and is
 28

1 founded on the facts that the real property which is the subject of this action is located in this
2 district at/near 1490 S. Arlington Rd., in the City of Akron, County of Akron, State of Ohio and
3 that plaintiff's causes of action arose in this district.
4

5 **PARTIES:**

6 5. Plaintiff SPENCER NEAL is a "physically handicapped person," a
7 "physically disabled person," and a "person with physical disabilities." (Hereinafter the terms
8 "physically disabled," "physically handicapped" and "person with physical disabilities" are used
9 interchangeably, as these words have similar or identical common usage and legal meaning.)
10 Plaintiff SPENCER NEAL is a "person with physical disabilities," as defined by all applicable
11 Ohio and United States laws. Plaintiff requires the use of a wheelchair to travel about in public.
12 Consequently, plaintiff SPENCER NEAL is a member of that portion of the public whose rights
13 are protected by the provisions of Ohio Revised Code § 4112.02, *et seq.* and Ohio Administrative
14 Code § 4101:1-11, *et sec.*
15

16 6. Defendants 1490 ARLINGTON, LTD, an Ohio Domestic Limited Liability
17 Company, and AARON'S, a for-profit corporation (hereinafter alternatively referred to as
18 "Defendants") are the owners and operators, lessors and/or lessees, or agents of the owners,
19 lessors and/or lessees, and/or alter ego, franchisor and/or franchisee, of the building and/or
20 buildings which constitute a public facility in and of itself, occupied by the SHOPS OF
21 ARLINGTON, a public accommodation, located at/near 1490 S. Arlington Rd., Akron, Ohio,
22 and subject to the requirements of Ohio state law requiring full and equal access to public
23 facilities pursuant to Ohio Revised Code § 4112.02, *et seq.*, Ohio Administrative Code § 4101:1-
24 11, *et sec.*, and subject to the Americans with Disability Act of 1990 ("title III" AND "ADA"),
25 42. U.S.C. §§ 12181 *et seq.*, and to all other legal requirements referred to in this complaint.
26
27
28

1 7. At all times relevant to this complaint, Defendants are the lessee, or agent of the
 2 lessees, and/or lessors, of said premises, and/or alter ego of the lessees, lessors and their agents,
 3 and owns and operates in joint enterprise the subject SHOPS OF ARLINGTON as a public
 4 facility at/near 1490 S. Arlington Rd., Akron, Ohio. This business is open to the general public
 5 and conducts business therein. The business operating on said premises is a “public
 6 accommodation” subject to the requirements of Ohio Revised Code § 4112.02, *et seq.* and Ohio
 7 Administrative Code § 4101:1-11, *et sec.* Plaintiff does not know the relative responsibilities of
 8 the defendant in the operation of the facilities herein complained of, and alleges a joint venture
 9 and common enterprise by all such Defendants.
 10

11 8. At all times relevant to this complaint, Defendants are the landlords/lessors,
 12 tenants/lessees and the owners and operators of the subject SHOPS OF ARLINGTON, a public
 13 accommodation located at/near 1490 S. Arlington Rd., Akron, Ohio. As such, Defendants are
 14 jointly and severally responsible to identify and remove architectural barriers pursuant to Code
 15 of Federal Regulations section 36.201(b), which states in pertinent
 16 part:
 17

18 **§ 36.201 General**

19 (b) Landlord and tenant responsibilities. Both the landlord
 20 who owns the building that houses a place of public
 21 accommodation and the tenant who owns or operates the place of
 22 public accommodation are public accommodations subject to the
 23 requirements of this part. As between the parties, allocation of
 24 responsibility for complying with the obligations of this part may
 be determined by lease or other contract.

25 CFR §36.201(b)

26 9. Plaintiff does not know the true names of Defendants, their business capacities, their
 27 ownership connection to the property and business, nor their relative responsibilities in causing
 28

1 the access violations herein complained of, and allege a joint venture and common enterprise by
 2 all such Defendants. Plaintiff is informed and believes that the Defendants herein is a public
 3 accommodation, and is the agent, ostensible agent, master, servant, employer, employee,
 4 representative, franchisor, franchisee, joint venturer, alter ego, partner, and associate, or such
 5 similar capacity, of each of the other Defendants, and was at all times acting and performing, or
 6 failing to act or perform, within the course and scope of his, her or its authority as agent,
 7 ostensible agent, master, servant, employer, employee, representative, franchiser, franchisee,
 8 joint venturer, alter ego, partner, and associate, or such similar capacity, and with the
 9 authorization, consent, permission or ratification of each of the other Defendants, and is
 10 responsible in some manner for the acts and omissions of the other Defendants in legally causing
 11 the violations and damages complained of herein, and have approved or ratified each of the acts
 12 or omissions of each other defendant, as herein described. Plaintiff will seek leave to amend
 13 when the true names, capacities, connections, and responsibilities of Defendants are ascertained.

14
 15
 16
 17 10. Plaintiff is informed and believes that the named Defendants conspired to commit
 18 the acts described herein, or alternatively, aided and abetted one another in the performance of
 19 the wrongful acts hereinafter alleged.

20 **PRELIMINARY FACTUAL ALLEGATIONS:**

21
 22 11. Defendants are the private person and/or entity that is a public accommodation that
 23 owns, leases (or leases to), or operates the SHOPS OF ARLINGTON, a retail facility, located
 24 at/near 1490 S. Arlington Rd., Akron, Ohio. The SHOPS OF ARLINGTON and each of its
 25 facilities are places “of public accommodation” subject to the requirements of the Americans
 26 with Disability Act of 1990 (“TITLE III” AND “ADA”), 42. U.S.C. §§ 12181 *et seq.*, Ohio
 27 Revised Code § 4112.02, *et seq.*; and Ohio Administrative Code § 4101:1-11, *et sec.* On

1 information and belief, said facility has undergone “alterations, structural repairs and additions,”
2 each of which has subjected the SHOPS OF ARLINGTON to handicapped access requirements.

3 12. Plaintiff SPENCER NEAL is a person with a disability. Plaintiff SPENCER NEAL is
4 a “physically disabled person,” as defined by all applicable Ohio and United States laws.
5 Plaintiff SPENCER NEAL requires the use of wheelchair for mobility and to travel in public.
6

7 13. At all times referred to herein and continuing to the present time, Defendants
8 advertised, publicized and held out the SHOPS OF ARLINGTON as being handicapped
9 accessible and handicapped usable.

10 14. On or about September 13, 2017, plaintiff SPENCER NEAL was an invitee and guest
11 at the subject SHOPS OF ARLINGTON, arriving for purposes of leasing a loveseat.
12

13 15. On or about September 13, 2017, plaintiff SPENCER NEAL upon entering the
14 parking lot noticed no designated accessible parking spaces on the shortest accessible route and
15 no signage designating handicapped accessible parking.

16 16. On or about September 13, 2017, plaintiff SPENCER NEAL attempted to gain access
17 to the establishment and noticed that there was no accessible route to enter the facility.
18

19 17. Therefore, at said time and place, plaintiff SPENCER NEAL, a person with
20 a disability, encountered the following inaccessible elements of the subject SHOPS OF
21 ARLINGTON which constituted architectural barriers and a denial of the proper and legally
22 required access to a public accommodation to persons with physical disabilities including, but
23 not limited to:
24

25 a. lack of designated handicapped accessible parking along the shortest
26 accessible route;

27 b. lack of signage designating handicapped accessible parking, including, but not
28

- limited to, van accessible parking, tow-away and fine signs;
- c. lack of an accessible route to the entrances of the establishment;
- d. uneven pavement;
- e. lack of or inadequately defined policies and procedures for the assistance of disabled patrons;
- f. on personal knowledge, information and belief, other public facilities and elements too numerous to list were improperly inaccessible for use by persons with physical disabilities.

18. The discriminatory violations described in ¶ 17 are not an exclusive list of the Defendants' violations. Plaintiff SPENCER NEAL requires the inspection of the Defendants' place of public accommodation in order to photograph and measure all of the discriminatory acts violating the Americans with Disability Act of 1990 ("title III" AND "ADA"), 42. U.S.C. §§ 12181 *et seq.*, Ohio Revised Code § 4112.02, *et seq.*; and Ohio Administrative Code §4101:1-11, *et sec.*

19. At all times stated herein, the existence of architectural barriers at Defendants' place of public accommodation evidenced "actual notice" of Defendants' intent not to comply with the Americans with Disability Act of 1990 ("title III" and "ADA"), 42. U.S.C. §§ 12181 *et seq.*, Ohio Revised Code § 4112.02, *et seq.*; and Ohio Administrative Code §4101:1-11, *et sec.* either then, now or in the future.

20. As a legal result of Defendants' failure to act as a reasonable and prudent public accommodation in identifying, removing or creating architectural barriers, policies, practices and procedures that denied access to plaintiff and other persons with disabilities, plaintiff suffered damages as alleged herein.

1 21. As a further legal result of the actions and failure to act of defendant, and as a
2 legal result of the failure to provide proper handicapped-accessible public facilities as set forth
3 herein, plaintiff was denied his civil rights to full and equal access to public facilities. Plaintiff
4 SPENCER NEAL suffered a loss of his civil rights and his rights as a person with physical
5 disabilities to full and equal access to public facilities, and further suffered from injury, shame,
6 humiliation, embarrassment, anger, chagrin, disappointment and worry, expectedly and naturally
7 associated with a person with physical disabilities being denied access, all to his damages as
8 prayed hereinafter in an amount within the jurisdiction of this court.
9

10 22. Plaintiff SPENCER NEAL is “physically handicapped,” “physically
11 disabled,” or a “person with physical disabilities” who was denied his rights to equal access to a
12 public facility by Defendants. Defendants maintained a public establishment without access for
13 persons with physical disabilities to its parking lot and other public areas as stated herein, and
14 continues to the date of filing this complaint to deny equal access to plaintiff and other persons
15 with physical disabilities in these and other ways.
16

17 23. On information and belief, construction alterations carried out by Defendants have
18 triggered access requirements under Americans with Disability Act of 1990 (“TITLE III” AND
19 “ADA”), 42. U.S.C. §§ 12181 *et seq.*, Ohio Revised Code § 4112.02, *et seq.*; and Ohio
20 Administrative Code §4101:1-11, *et sec.*
21

22 24. Plaintiff, as described herein below, seeks injunctive relief to require the SHOPS OF
23 ARLINGTON to be made accessible to meet the requirements of both Ohio law and the
24 Americans with Disabilities Act, whichever is more restrictive, so long as Defendants operates
25 and/or lease the SHOPS OF ARLINGTON as a public facility. Plaintiff seeks damages for
26 violation of his civil rights, from September 13, 2017 until such date as defendant brings the
27

1 establishment into full compliance with the requirements of Ohio and federal law. To encourage
2 defendant to bring the establishment into compliance with the law, plaintiff also seeks daily
3 damages of not less than \$1,000/day for each day after his visit until such time as the SHOPS OF
4 ARLINGTON are made fully accessible to plaintiff and to other persons with physical
5 disabilities.
6

7 25. On information and belief, Defendants have been negligent in its affirmative duty to
8 identify the architectural barriers complained of herein and negligent in the removal of some or
9 all of said barriers.
10

11 26. Because of Defendants' violations, plaintiff and other persons with physical
12 disabilities are unable to use public facilities such as those owned and operated by Defendants on
13 a "full and equal" basis unless such facility is in compliance with the provisions of the
14 Americans with Disabilities Act and other accessibility law as plead herein. Plaintiff seeks an
15 order from this court compelling Defendants to make the SHOPS OF ARLINGTON accessible
16 to persons with disabilities.
17

18 27. On information and belief, Defendants have intentionally undertaken to modify and
19 alter existing building(s), and have failed to make them comply with accessibility requirements.
20 The acts and omission of Defendants in failing to provide the required accessible public facilities
21 at the time of plaintiff's visit and injuries, indicate actual and implied malice towards plaintiff,
22 and despicable conduct carried out by Defendants with a willful and conscious disregard for the
23 rights and safety of plaintiff and other similarly situated persons, and justify punitive damages
24 pursuant to Ohio Revised Code § 2315.21, in amounts sufficient to make a more profound
25 example of Defendants to other operators of other establishment and other public facilities, and
26 to punish Defendants and to carry out the purposes of § 2315.21.
27
28

1 28. Plaintiff is informed and believes and therefore alleges that Defendants caused the
2 subject building(s) to be constructed, altered and maintained in such a manner that persons with
3 physical disabilities were denied full and equal access to, within and throughout said building(s)
4 of the SHOPS OF ARLINGTON and were denied full and equal use of said public facilities.
5 Further, on information and belief, defendant has continued to maintain and operate said SHOPS
6 OF ARLINGTON and/or its building(s) in such conditions up to the present time, despite actual
7 and constructive notice to such Defendants that the configuration of the establishment and/or its
8 building(s) is in violation of the civil rights of persons with physical disabilities, such as plaintiff
9 SPENCER NEAL and the disability community. Such construction, modification, ownership,
10 operation, maintenance and practices of such public facilities are in violation of law as stated in
11 Americans with Disability Act of 1990 ("TITLE III" AND "ADA"), 42. U.S.C. §§ 12181 *et seq.*
12 and elsewhere in the laws of Ohio.

15 29. On information and belief, the subject public facilities and building(s) of
16 the SHOPS OF ARLINGTON denied full and equal access to plaintiff and other persons with
17 physical disabilities in other respects due to noncompliance with requirements of Ohio Revised
18 Code § 4112.02, *et seq.*; and Ohio Administrative Code §4101:1-11, *et sec.*

20 30. On personal knowledge, information and belief, the basis of Defendants' actual
21 and constructive notice that the physical configuration of the facilities including, but not limited
22 to, architectural barriers constituting the SHOPS OF ARLINGTON and/or building(s) was in
23 violation of the civil rights of persons with physical disabilities, such as plaintiff, includes, but is
24 not limited to, communications with invitees and guests, owners of other establishments and
25 businesses, notices Defendants obtained from governmental agencies upon modification,
26 improvement, or substantial repair of the subject premises and other properties owned by this
27

1 Defendants, newspaper articles and trade publications regarding the Americans with Disabilities
2 Act and other access laws, public service announcements, and other similar information.
3 Defendants' failure, under state and federal law, to make the establishment accessible is further
4 evidence of Defendants' conscious disregard for the rights of plaintiff and other similarly
5 situated persons with disabilities. The scope and means of the knowledge of Defendants are
6 within Defendants' exclusive control and cannot be ascertained except through discovery.
7 Despite being informed of such effect on plaintiff and other persons with physical disabilities
8 due to the lack of accessible facilities, Defendants knowingly and willfully refused to take any
9 steps to rectify the situation and to provide full and equal access for plaintiff and other persons
10 with physical disabilities to the establishment. Said Defendants have continued such practices, in
11 conscious disregard for the rights of plaintiff and other persons with physical disabilities, up to
12 the date of filing of this complaint, and continuing thereon. Defendants have further actual
13 knowledge of the architectural barriers referred to herein by virtue of the demand letter addressed
14 to the Defendants and served concurrently with the complaint. Said conduct, with knowledge of
15 the effect it was and is having on plaintiff and other persons with physical disabilities, constitutes
16 despicable conduct in conscious disregard of the rights and safety of plaintiff and of other
17 similarly situated persons, justifying the imposition of punitive damages.

21 31. Punitive Damages -- Defendants, at times prior to and including September 13, 2017
22 and continuing to the present time, knew that persons with physical disabilities were denied their
23 rights of equal access to all portions of this public facility. Despite such knowledge, Defendants
24 failed and refused to take steps to comply with the applicable access statutes; and despite
25 knowledge of the resulting problems and denial of civil rights thereby suffered by plaintiff and
26 other similarly situated persons with disabilities, including the specific notices referred to in
27

1 paragraph 30 of this complaint. Defendants have failed and refused to take action to grant full
2 and equal access to persons with physical disabilities in the respects complained of hereinabove.
3 Defendants have carried out a course of conduct of refusing to respond to, or correct complaints
4 about, denial of handicap access and has refused to comply with its legal obligations to make the
5 SHOPS OF ARLINGTON accessible pursuant to the Americans with Disabilities Act and Ohio
6 law. Such actions and continuing course of conduct by Defendants evidence despicable conduct
7 in conscious disregard for the rights or safety of plaintiff and of other similarly situated persons,
8 justifying an award of punitive damages.
9

10
11 32. Defendants' actions have also been oppressive to persons with physical
12 disabilities and of other members of the public, and have evidenced actual or implied malicious
13 intent toward those members of the public, such as plaintiff and other persons with physical
14 disabilities who have been denied the proper access they are entitled to by law. Further,
15 Defendants' refusals on a day-to-day basis to remove the barriers complained of herein evidence
16 despicable conduct in conscious disregard for the rights of plaintiff and other members of the
17 public with physical disabilities.
18

19 33. Plaintiff prays for an award of punitive damages against Defendants in an amount
20 sufficient to make a more profound example of Defendants and discourage owners and operators
21 of other establishments, and other public facilities, from willful disregard of the rights of persons
22 with physical disabilities. Plaintiff does not know the financial worth of Defendants and seeks
23 leave to amend this complaint when such facts are known.
24

25 34. Plaintiff SPENCER NEAL, would, could and will return to the subject
26 public accommodation when it is made accessible to persons with disabilities.
27
28

1 **I. FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A PUBLIC**
2 **ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH**
3 **DISABILITIES ACT OF 1990 (42 U.S.C. §12101, *et seq.*)**

4 36. Plaintiff pleads and incorporate by reference, as if fully set forth again herein,
5 the allegations contained in paragraphs 1 through 35 of this complaint.

6 37. Pursuant to law, in 1990, the United States Congress made findings per 42 U.S.C.
7 §12101 regarding persons with physical disabilities, finding that laws were needed to more fully
8 protect:

9 some 43 million Americans with one or more physical or mental
10 disabilities; [that] historically society has tended to isolate and
11 segregate individuals with disabilities; [that] such forms of
12 discrimination against individuals with disabilities continue to be a
13 serious and pervasive social problem; [that] the nation's proper
14 goals regarding individuals with disabilities are to assure equality
15 of opportunity, full participation, independent living and economic
16 self-sufficiency for such individuals; [and that] the continuing
existence of unfair and unnecessary discrimination and prejudice
denies people with disabilities the opportunity to compete on an
equal basis and to pursue those opportunities for which our free
society is justifiably famous.

17 38. Congress stated as its purpose in passing the Americans with Disabilities Act of
18 1990 (42 U.S.C. §12102):

19 It is the purpose of this act (1) to provide a clear and
20 comprehensive national mandate for the elimination of
21 discrimination against individuals with disabilities; (2) to provide
22 clear, strong, consistent, enforceable standards addressing
23 discrimination against individuals with disabilities; (3) to ensure
24 that the Federal government plays a central role in enforcing the
standards established in this act on behalf of individuals with
disabilities; and (4) to invoke the sweep of Congressional
authority, including the power to enforce the 14th Amendment and
to regulate commerce, in order to address the major areas of
discrimination faced day to day by people with disabilities.

25 39. As part of the Americans with Disabilities Act of 1990, (hereinafter the "ADA"),
26 Congress passed "Title III - Public Accommodations and Services Operated by Private Entities"
27
28 COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES - 13

1 (Section 301 42 U.S.C. §12181, *et seq.*). Among the public accommodations identified for
2 purposes of this title was:

3 (7) PUBLIC ACCOMMODATION - The following private
4 entities are considered public accommodations for purposes of this
5 title, if the operations of such entities affect commerce -

6 . . .

7 (B) an entertainment facility, bar, or other establishment serving food or drink;

8 42 U.S.C. §12181(7)(B).

9 40. Pursuant to §302, 42 U.S.C. §12182, “No individual shall be discriminated
10 against on the basis of disability in the full and equal enjoyment of the goods, services, facilities,
11 privileges, advantages, or accommodations of any place of public accommodation by any person
12 who owns, leases, or leases to, or operates a place of public accommodation.”

13 41. The specific prohibitions against discrimination set forth in §302(b)(2)(a),
14 42 U.S.C. §12182(b)(2)(a) are:

15 (i) the imposition or application of eligibility criteria
16 that screen out or tend to screen out an individual with a disability
17 or any class of individuals with disabilities from fully and equally
18 enjoying any goods, services, facilities, privileges, advantages, or
19 accommodations, unless such criteria can be shown to be
20 necessary for the provision of the goods, services, facilities,
21 privileges, advantages, or accommodations being offered;

22 (ii) a failure to make reasonable modifications in
23 policies, practices, or procedures, when such modifications are
24 necessary to afford such goods, services, facilities, privileges,
25 advantages or accommodations to individuals with disabilities,
26 unless the entity can demonstrate that making such modifications
27 would fundamentally alter the nature of such goods, services,
28 facilities, privileges, advantages, or accommodations;

(iii) a failure to take such steps as may be necessary to
ensure that no individual with a disability is excluded, denied
services, segregated or otherwise treated differently than other
individuals because of the absence of auxiliary aids and services,
unless the entity can demonstrate that taking such steps would
fundamentally alter the nature of the good, service, facility,

privilege, advantage, or accommodation being offered or would result in an undue burden;

(iv) a failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities . . . where such removal is readily achievable; and

(v) where an entity can demonstrate that the removal of a barrier under clause (iv) is not readily achievable, a failure to make such goods, services, facilities, privileges, advantages or accommodations available through alternative methods if such methods are readily achievable.

The acts of Defendants set forth herein were a violation of plaintiff's rights under the ADA, 42.

U.S.C. §§ 12181 *et seq.*; Ohio Revised Code § 4112.02, *et seq.*; and Ohio Administrative Code § 4101:1-11, *et sec.*, making available damage remedies.

42. The removal of the barriers complained of by plaintiff as hereinabove alleged was at all times after January 26, 1992 "readily achievable" as to the subject building(s) of the SHOPS OF ARLINGTON pursuant to 42 U.S.C. §12182 (b)(2)(A)(i)-(iv). On information and belief, if the removal of all the barriers complained of herein together was not "readily achievable," the removal of each individual barrier complained of herein was "readily achievable." On information and belief, Defendants' failure to remove said barriers was likewise due to discriminatory practices, procedures and eligibility criteria, as defined by §302(b)(2)(a)(i)-(iii); 42 U.S.C. §12182 (b)(2)(A)(i).

43. Per §301(9), 42 U.S.C. §12181 (9), the term "readily achievable" means "easily accomplishable and able to be carried out without much difficulty or expense." The statute defines relative "expense" in part in relation to the total financial resources of the entities involved. Plaintiff alleges that properly repairing, modifying, or altering each of the items that plaintiff complains of herein were and are "readily achievable" by the Defendants under the standards set forth under §301(9) of the Americans with Disabilities Act. Further, if it was not

COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES - 15

1 “readily achievable” for Defendants to remove each of such barriers, Defendants have failed to
2 make the required services available through alternative methods which were readily achievable.

3 44. On information and belief, construction work on, and modifications of, the
4 subject building(s) of the SHOPS OF ARLINGTON occurred after the compliance date for the
5 Americans with Disabilities Act, January 26, 1992, independently triggering access requirements
6 under Title III of the ADA.
7

8 45. Pursuant to the Americans with Disabilities Act of 1990, 42 U.S.C. §12188, *et*
9 *seq.*, §308, plaintiff is entitled to the remedies and procedures set forth in §204(a) of the Civil
10 Rights Act of 1964, 42 U.S.C. 2000(a)-3(a), as plaintiff is being subjected to discrimination on
11 the basis of disability in violation of this title or have reasonable grounds for believing that
12 plaintiff is about to be subjected to discrimination in violation of §302. Plaintiff cannot
13 return to or make use of the public facilities complained of herein so long as the premises and
14 Defendants’ policies bar full and equal use by persons with physical disabilities.
15

16 46. Per §308(a)(1) (42 U.S.C. 12188), “Nothing in this section shall require a person
17 with a disability to engage in a futile gesture if such person has actual notice that a person or
18 organization covered by this title does not intend to comply with its provisions.” Pursuant to this
19 last section, plaintiff SPENCER NEAL has not returned to Defendants’ premises since on or
20 about September 13, 2017, but on information and belief, alleges that Defendants have continued
21 to violate the law and deny the rights of plaintiff and of other persons with physical disabilities to
22 access this public accommodation. Pursuant to §308(a)(2), “In cases of violations of
23 §302(b)(2)(A)(iv) . . . injunctive relief shall include an order to alter facilities to make such
24 facilities readily accessible to and usable by individuals with disabilities to the extent required by
25 this title.”
26
27
28

1 47. Plaintiff seeks relief pursuant to remedies set forth in §204(a) of the Civil Rights
2 Act of 1964 (42 U.S.C. 2000(a)-3(a)), and pursuant to federal regulations adopted to implement
3 the Americans with Disabilities Act of 1990, including but not limited to an order granting
4 injunctive relief and attorneys' fees. Plaintiff will seek attorneys' fees conditioned upon being
5 deemed to be the prevailing party.
6

7 48. Plaintiff seek damages pursuant to Ohio Revised Code § 4112.02, *et seq.* and
8 Ohio Administrative Code § 4101:1-11, *et sec.*, which provide, within the statutory scheme, that
9 a violation of the ADA and/or Ohio's accessibility standards is a violation of Ohio law.
10

11 Wherefore, plaintiff prays for relief and damages as hereinafter stated.

12 **II. SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND EQUAL ACCESS**
13 **IN VIOLATION OF OHIO REVISED CODE § 4112.02, *et seq.***

14 49. Plaintiff repleads and incorporates by reference as if fully set forth again herein,
15 the allegations contained in paragraphs 1 through 48 of this complaint.

16 50. At all times relevant to this action, Ohio Revised Code § 4112.0254 has provided
17 that persons with physical disabilities are not to be discriminated against because of physical
18 handicap or disability. This section provides that:

19 It shall be an unlawful discriminatory practice:

20
21 (G) For any proprietor or any employee, keeper, or manager of a place of
22 public accommodation to deny to any person, except for reasons
23 applicable alike to all persons regardless of race, color, religion, sex,
24 military status, national origin, disability, age, or ancestry, the full
enjoyment of the accommodations, advantages, facilities, or privileges of
the place of public accommodation.

25 51. The SHOPS OF ARLINGTON and the business therein, are "places of public
26 accommodation" pursuant to Ohio Revised Code § 4112.01(A)(9).

27 52. Defendants committed an unlawful act pursuant to Ohio Revised Code §
28

1 4112.02(G) by denying plaintiff SPENCER NEAL full enjoyment of its accommodations,
2 advantages, facilities, or privileges, whereas, plaintiff SPENCER NEAL had great difficulty
3 entering the property due to extensive barriers for patrons confined to wheelchairs on the
4 accessible route.
5

6 53. Pursuant to Ohio Revised Code § 4112.99, plaintiff SPENCER NEAL is
7 entitled to compensatory and punitive damages, and attorney fees and costs, in an amount to be
8 determined at trial, but in any event not less than \$25,000.00, as well as issuance of an injunction
9 requiring defendant to allow full and equal enjoyment of its goods, services, facilities, privileges,
10 and advantages to disabled persons.
11

12 54. A separate act in violation of Ohio Revised Code § 4112.02(G) has been
13 committed each day that Defendants act or fail to act and/or knowingly and willfully fails and
14 refuse to remove each architectural barrier or policy and procedure barrier presently existing at
15 the subject public accommodation which denies full and equal access for persons with physical
16 disabilities to said building(s), elements and facilities of the SHOPS OF ARLINGTON. Plaintiff
17 has been denied full and equal access on an ongoing basis since the date of plaintiff SPENCER
18 NEAL' first visit. As a legal result, plaintiff is entitled to seek appropriate relief, such as
19 damages, pursuant to Ohio Revised Code § 4112.99.
20

21 55. On or about September 13, 2017, plaintiff SPENCER NEAL suffered violations
22 of Ohio Revised Code § 4112.02(G) in that plaintiff SPENCER NEAL was denied access to the
23 parking and other public facilities as stated herein at the SHOPS OF ARLINGTON and on the
24 basis that plaintiff SPENCER NEAL was a person with physical disabilities.
25

26 56. As a result of the denial of equal access to Defendants' facilities due to the acts
27 and omissions of Defendants in owning, operating and maintaining these subject public facilities,
28

1 plaintiff suffered violations of his civil rights, as well as suffering from shame, humiliation,
2 embarrassment, frustration, anger, chagrin, disappointment and worry, all of which are
3 expectedly and naturally associated with a denial of access to a person with physical disabilities,
4 all to plaintiff's damages as hereinafter stated.

5
6 57. Plaintiff has been damaged by Defendants' wrongful conduct and seeks the relief
7 that is afforded by Ohio Revised Code § 4112 for violation of plaintiff's rights as a person,
8 including statutory damages according to proof.

9
10 58. As a result of Defendants' acts and omissions in this regard, plaintiff has been
11 required to incur legal expenses and hire attorneys in order to enforce plaintiff's rights and
12 enforce the provisions of the law protecting access for persons with physical disabilities and
13 prohibiting discrimination against persons with physical disabilities. Pursuant to the provisions
14 of Ohio Revised Code § 4112, plaintiff therefore will seek recovery in this lawsuit for all
15 reasonable attorneys' fees and costs incurred if deemed the prevailing party.

16
17 Wherefore, plaintiff prays for relief and damages as hereinafter stated.

18 **III. THIRD CAUSE OF ACTION FOR DENIAL OF FULL AND EQUAL ACCESS**
19 **IN VIOLATION OF OHIO ADMINISTRATIVE CODE § 4101:1-11, *et seq.***

20 59. Plaintiff repleads and incorporates by reference as if fully set forth again herein,
21 the allegations contained in paragraphs 1 through 58 of this complaint.

22 60. Ohio Administrative Code (hereinafter "O.A.C.") § 4101:1-11 controls the design
23 and construction of facilities for accessibility for individuals with disabilities.

24 61. Sites, buildings, structures, facilities, elements and spaces, temporary or
25 permanent, shall be accessible to individuals with disabilities. O.A.C. § 1103.1.

26
27 62. The SHOPS OF ARLINGTON and the business therein, being a site, building,
28 structure, facility, element or space, committed an unlawful act pursuant to O.A.C. § 1104.1 by
COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES - 19

1 failing to provide at least one accessible route to the 1490 ARLINGTON, LTD building
2 entrance.

3 63. As the SHOPS OF ARLINGTON provides between 1 to 75 parking spaces,
4 Defendants are required to have a minimum of three accessible parking spaces pursuant to
5 O.A.C. § 1106.1.
6

7 64. The SHOPS OF ARLINGTON committed an unlawful act pursuant to O.A.C. §
8 1106.1 by failing to provide any accessible parking spaces, which are to include applicable
9 signage. In violation of O.A.C. § 1106.6, Defendants failed to provide any accessible parking
10 spaces on the shortest accessible route of travel from adjacent parking to an accessible building
11 entrance.
12

13 65. Defendants' violations denied plaintiff SPENCER NEAL full enjoyment of
14 its accommodations, advantages, facilities, or privileges, whereas, plaintiff SPENCER NEAL
15 had great difficulty entering the property due to extensive barriers for patrons confined to
16 wheelchairs on the accessible route.
17

18 66. As a result of these violations, plaintiff SPENCER NEAL is entitled to
19 compensatory and punitive damages, and attorney fees and costs, in an amount to be determined
20 at trial, but in any event not less than \$25,000.00, as well as issuance of an injunction requiring
21 Defendants to allow full and equal enjoyment of its goods, services, facilities, privileges, and
22 advantages to disabled persons.
23

24 67. A separate act in violation of Ohio Administrative Code § 4101:1-11, *et seq.* has
25 been committed each day that Defendants act or fail to act and/or knowingly and willfully
26 fail and refuse to make accessible its site for physically disabled persons presently existing at the
27 subject SHOPS OF ARLINGTON. Plaintiff has been denied full and equal access on an ongoing
28

1 basis since the date of plaintiff SPENCER NEAL' first visit. As a legal result, plaintiff is entitled
2 to seek appropriate relief, such as damages.

3 68. As a result of the SHOPS OF ARLINGTON's accessibility violations, plaintiff
4 suffered violations of his civil rights, as well as suffering from injury, shame, humiliation,
5 embarrassment, frustration, anger, chagrin, disappointment and worry, all of which are
6 expectedly and naturally associated with a denial of access to a person with physical disabilities,
7 all to plaintiff's damages as hereinafter stated.
8

9 69. Plaintiff has been damaged by Defendants' wrongful conduct and seeks relief
10 for violation of the O.A.C., including actual and special damages according to proof.
11

12 70. As a result of Defendants' acts and omissions in this regard, plaintiff has been
13 required to incur legal expenses and hire attorneys in order to enforce plaintiff's rights and
14 enforce the provisions of the law protecting access for persons with physical disabilities and
15 prohibiting discrimination against persons with physical disabilities. Plaintiff therefore will seek
16 recovery in this lawsuit for all reasonable attorneys' fees and costs incurred if deemed the
17 prevailing party.
18

19 Wherefore, plaintiff prays for relief and damages as hereinafter stated.

20 **PRAYER:**

21 Wherefore, plaintiff prays that this court grant relief and damages as follows:
22

23 **I. PRAYER FOR FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A**
24 **PUBLIC ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH**
25 **DISABILITIES ACT OF 1990 (42 U.S.C. §1 2101, et seq.)**

26 1. For injunctive relief, compelling Defendants to make the SHOPS OF
27 ARLINGTON, located at 1490 S. Arlington Rd., Akron, Ohio, readily accessible to and usable
28 by individuals with disabilities; and to make reasonable modifications in policies, practice,

1 eligibility criteria and procedures so as to afford full access to the goods, services, facilities,
2 privileges, advantages and accommodations being offered.

3 2. For attorneys' fees, litigation expenses and costs of suit, if plaintiff is deemed
4 the prevailing party; and
5

6 3. For such other and further relief as the court may deem proper.

7 **I. PRAYER FOR SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND**
8 **EQUAL ACCESS IN VIOLATION OF OHIO REVISED CODE § 4112.02, *et***
9 ***seq.***

10 4. For injunctive relief, compelling Defendants to make the SHOPS OF
11 ARLINGTON, located at 1490 S. Arlington Rd., Akron, Ohio, readily accessible to and usable
12 by individuals with disabilities, per state law.

13 5. General and compensatory damages according to proof;

14 6. All damages for each day, from the inception of the filing of this complaint, on
15 which Defendants have failed to remove barriers which denied plaintiff and other persons with
16 disabilities full and equal access.

17 7. Attorneys' fees pursuant to Ohio Revised Code § 4112.99, if plaintiff is deemed
18 the prevailing party;
19

20 8. Punitive damages, pursuant to Ohio Revised Code § 2315.21;

21 9. For all costs of suit;

22 10. Prejudgment interest pursuant to Ohio Revised Code 1343.03(A);

23 11. Such other and further relief as the court may deem just and proper.

24 **III. PRAYER FOR THIRD CAUSE OF ACTION FOR DENIAL OF FULL AND**
25 **EQUAL ACCESS IN VIOLATION OF OHIO ADMINISTRATIVE CODE §**
26 **4101:1-11, *et seq.***

27 12. For injunctive relief, compelling Defendants to make the SHOPS OF
28

1 ARLINGTON, located at 1490 S. Arlington Rd., Akron, Ohio, readily accessible to and usable
2 by individuals with disabilities, per state law.

3 13. General and compensatory damages according to proof;

4 14. All damages for each day, from the inception of the filing of this complaint, on
5 which Defendants have failed to remove barriers which denied plaintiff and other persons with
6 disabilities full and equal access.
7

8 15. Attorneys' fees pursuant to Ohio Revised Code § 4112.99, if plaintiff is deemed
9 the prevailing party;

10 16. Punitive damages, pursuant to Ohio Revised Code § 2315.21;

11 17. For all costs of suit;

12 18. Prejudgment interest pursuant to Ohio Revised Code 1343.03(A);

13 19. Such other and further relief as the court may deem just and proper.
14
15

16 **/s/ COLIN G. MEEKER**

17 COLIN G. MEEKER (Ohio Bar No. 0092980)
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24 Attorney for Plaintiff SPENCER NEAL
25
26
27
28

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial for all claims for which a jury is permitted.

/s/ COLIN G. MEEKER

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